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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

96-262

In the Matter of	)	
	)	
Assessment of Presubscribed	)	CCB/CPD Docket No. 98-34
Interexchange Carrier Charges	)	
on Public Payphones	)	

COMMENTS OF CLEARTEL COMMUNICATIONS, INC.

Cleartel Communications, Inc. ("Cleartel"), by its undersigned counsel, respectfully submits its comments on the assessment of presubscribed interexchange carrier charges ("PICCs") on payphone lines in response to the Federal Communications Commission's ("Commission") May 4, 1998 Public Notice. As demonstrated in these comments, payphone lines are unique and different from residential and business lines, and the recovery of costs associated with payphone lines cannot and should not be accomplished in the same manner adopted in the Commission's *Access Charge Reform Order*[1] for residential and business lines. Application of the PICC on the presubscribed 0+ payphone provider would be inappropriate, detrimental to the existence of such service and, thus contrary to the public interest. Furthermore, the imposition of the $2.75 multiline business PICC on payphone lines[2] is arbitrary, and clearly an abuse of local exchange carriers' ("LECs") market power and should be explicitly prohibited.

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1 *Access Charge Reform*, CC Docket No, 96-262, First Report and Order, FCC 97-158 (released May 16, 1997).

2 Cleartel notes that the deleterious impact of applying the PICC to the presubscribed 0+ carrier for payphone lines remains the same whether the payphone is a LEC-owned payphone or a privately-owned payphone. Thus, even though the Public Notice was not entirely clear with respect to the assessment of PICCs on 0+ providers for independent payphones, because some of the letters on which the Commission requested comment did address PICCs for independent payphones, Cleartel's comments address the assessment of the PICC on all payphones, LEC-owned and independent.

I. INTRODUCTION

On May 4, 1998, the Commission released a Public Notice seeking comment on the assessment of PICCs on payphone lines. According to a number of letters received by the Commission, price cap LECs have been assessing the $2.75 multiline business PICC on 1+ and/or 0+ interstate carriers presubscribed to payphone lines. The letters raise various issues including whether such assessment on 0+ carriers is appropriate under the Commission rules and, if so, whether the multiline business line PICC is the appropriate charge.

The Commission's *Access Charge Reform Order* implemented a new PICC charge on IXCs presubscribed to business and residential telephones to allow price cap LECs to recover a portion of the common line revenues permitted by price cap regulation. The Commission placed a ceiling on the PICC starting at $0.53 per line for single-line business and first residential lines, $1.50 on additional residential lines, and $2.75 on multiline business lines. The *Access Charge Reform Order* never mentioned payphone lines. Therefore, where the Commission clearly did not address payphone lines in its analysis, considerable controversy has arisen regarding whether the same PICC analysis would be suitable for payphone lines, which are unique and different from the lines considered by the Commission, and whether the PICC should be assessed on payphone lines and, if so, on whom.

As requested by the Commission in its May 4, 1998 Public Notice, Cleartel restates and underlines each of the Commission's questions addressed by Cleartel in these comments.

II. THE UNIQUE *USE* OF PAYPHONE LINES MAKES THE COMMISSION'S ORDER INAPPLICABLE

The Commission's rationale for establishing the PICC for the recovery of common line costs is inapplicable to payphone lines. Payphone lines are significantly different from residential and business common lines, which served as the basis for the Commission analysis. The nature and use of a payphone line is fundamentally different from that of the common line, and there is no basis for simply combining the two together. The premise behind the PICC was to have those who benefit from the use of the common line (the line from the customer's house or business to the LEC central office) contribute to the cost for that line. For business and residential service, this is a relatively straightforward concept -- one subscriber per phone choosing one presubscribed IXC per phone. In such cases, it is relatively obvious that one IXC derives a particular benefit from the existence of the line. Under the Commission's rationale in the *Access Charge Reform Order*, that identifiable benefit justified the LECs' charge to the presubscribed IXC to recoup the cost it incurred in providing the common line. With only one IXC, the LEC can assess its charge and the IXC can pay the charge, with confidence that those who benefit are contributing their share to the common line.

Payphone lines, however, do not fit into either the business or residential classification of services. Payphones may be located in various places and their installation is for the benefit of the general public. Numerous people and numerous carriers potentially benefit from the payphone line. Due to the lack of a defined consumer, individual payphones may bring in *significantly* different revenues, based on location, the season, or any number of factors. If the 0+ carrier bears the entire PICC, it will be forced to raise rates to try to recoup the cost, and consumers who make 0+ calls will be unreasonably forced to contribute to the cost of the payphone line, while consumers who dial around will not contribute, thereby forcing 0+ calls to subsidize *all* other calls. Given these difficult policy considerations (that simply do not apply to presubscribed residential and business lines), clearly, the Commission did not consider payphone lines when it devised the PICC.

The Commission's analysis and model for assessing the PICC for residential and business lines thus cannot apply to payphone services. The economic model used by the Commission in establishing the current PICC was based on 1+ presubscribed IXC service to residential or business phones. Having focused solely on the factors applicable to 1+ presubscribed residential or business service, the Commission should not now arbitrarily impose the same results on payphone providers, especially 0+ payphone providers (a distinct industry). An IXC serving a business or residence can make a reasonable estimate of the amount of use (and therefore the value of that line to the IXC) simply because the owner is presubscribed to that IXC. Payphone providers, however, can make no estimates of use because there is no certainty about customer base. Payphones serve a population that is transient and unpredictable. Changing factors such as location, season, demographics, and unforseen events may greatly impact the projected use of any particular payphone. Factors such as these were not considered by the Commission in its *Access Charge Reform Order*, and until they are addressed, the current PICC remains inapplicable to payphone providers.[3] Cleartel believes that such an analysis will demonstrate that a PICC on payphone lines is inappropriate due to the unique service payphones provide to the general public.

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[3] In its letter to the Commission, National Operator Services, Inc. argued that the FCC's Order was not intended to be applied to payphones and that the PICC should not therefore be applied to 0+ service providers.

III. THE COMMISSION'S EXISTING RULE GOVERNING COLLECTION OF THE PICC DOES NOT PERMIT PRICE CAP LECS TO IMPOSE PICC CHARGES FOR PAYPHONE LINES

2. Does the Commission's existing rule governing collection of the PICC, 47 C.F.R. § 69.153, permit price cap LECs to impose PICC charges for LEC public payphone lines and, if not, whether the rule should be amended to provide explicitly for assessment of PICCs on public payphone lines?

The FCC's current PICC rules do not permit price cap LECs to impose PICCs for payphone lines. In its *Access Charge Reform Order*, the Commission developed a method by with LECs could recoup some of their costs associated with common lines utilized by residential and business customers. In establishing the PICC, the Commission's stated purpose was to create a charge based more closely on the manner in which the costs for these residential and business lines were incurred. The Commission concluded that costs were incurred by the delivery of both interstate and intrastate traffic. Due to the benefits accrued by IXCs through the installation, maintenance and use of residential and business lines, the Commission allowed price cap LECs to assess charges on interexchange carriers ("IXCs") to recover the costs associated with such lines.

To assess the allowable monthly PICC charge to be placed by the LECs on IXCs for use of the "common line" when servicing residences or businesses, the Commission utilized a calculation based on estimated amount of use, type of use, and number of lines. The Commission calculated a maximum monthly rate of $0.53 for primary residential and single-line business subscriber lines, and $2.75 for multiline business subscriber lines. The factors considered in arriving at these rates would be much different for payphone lines, if the factors are calculable for payphone lines at all. The Commission did not mention payphone lines and, therefore, it appears that payphone lines were not considered in the Commission's analysis of the PICC. It would be inadvisable to impose a fee structure on a network element without appropriate costing and analysis, a result that would completely contradict the objective of the Commission to move toward cost-based recovery for network elements and services provided by the LECs.

The text of the rule itself provides further evidence that the FCC did not intend price cap LECs to assess PICCs on payphone lines. While the FCC's rules regarding the end user common line ("EUCL") explicitly state that "[a] charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones," 47 C.F.R. § 69.152(a), the FCC's rules regarding PICCs limit the imposition of the PICC to "the subscriber's presubscribed interexchange carrier," 47 C.F.R. § 69.153(a), and do not direct price cap LECs to assess the PICC on the interexchange carrier presubscribed to serve public telephones.

IV. THE MULTILINE BUSINESS PICC IS INAPPROPRIATE FOR PAYPHONE LINES

4. <u>Should all public payphones be charged the multiline business PICC, or should some public payphones, such as those that constitute the only telephone line at a given location, be charged the single-line business PICC?</u>

Neither the multiline or single-line business PICC is appropriate for payphone lines. As stated above, the Commission's *Access Charge Reform Order* allows LECs to charge a maximum monthly rate of $0.53 for primary residential, $0.53 for single-line business, $1.50 for non-primary residential, and $2.75 for multiline business subscriber lines. Even if a payphone *could* be considered a business line, the *Access Charge Reform Order* did not discuss the terms "single-line" and "multiline" with regard to PICCs to be assessed on business line customers. Currently, LECs are taking advantage of the confusion over what constitutes a "single-line" or a "multiline" business line and, not surprisingly, the LECs are charging the higher, multiline business rate. Revenues received from payphones (especially for 0+ service) are in no way comparable to the typical 1+ business account. Neither the type of traffic, nor the customer base, nor the revenue generated support the application of the multiline business PICC on payphone providers.

V. APPLICATION OF THE PICC ON THE PRESUBSCRIBED 0+ PAYPHONE PROVIDER WOULD BE INAPPROPRIATE AND DETRIMENTAL TO THE EXISTENCE OF 0+ SERVICE

6. <u>To what degree could imposition of PICC charges on any of the parties listed in question (3), above, cause reductions in the availability of public payphone services, increases in rates, or reduction in competition for interstate, interLATA traffic originating from public payphones?</u>

The *Access Reform Order* allows IXCs serving residences and businesses to recoup the expense of the PICC by including it in their charges to end users. Payphone 0+ providers cannot recoup that expense. Payphone providers serve a transient population and, in attempting to recoup their costs, payphone providers, especially 0+ payphone providers, face an invisible, ever changing target. The only conceivable way to pass along these charges to the end user would be to increase rates generally. In other words, there is no way for Cleartel to charge the end user in a reasonable way. With no way of accurately forecasting the stream of revenue for the payphone, the 0+ payphone provider would have to predict an inherently uncertain revenue base resulting in either overcharging or undercharging the 0+ user. In addition to the difficulty in charging the 0+ user the correct amount, other users of the payphone would be excused from such contribution and 0+ end users would, in effect, be subsidizing those consumers' use of the payphone line.

Not only is this a result contrary to the public interest and obviously unfair to consumers, but it threatens the existence of such services. Consumers may find themselves at payphones without the ability to make 0+ calls. 0+ carriers may not be able to serve certain payphones where the traffic from that phone is not heavy. Furthermore, some 0+ carriers may not remain in the 0+ business. In its letter, the Boston Telecommunications Company informed the Commission that the $2.75 per line PICC decreased the company's monthly income by 24% requiring the company to lay off most of its staff. The LECs are imposing a PICC on OSPs serving LEC payphones which is disproportionate to the revenue generated from such payphones and the OSPs are incapable of recouping any portion of such payments from end users.

CONCLUSION

Cleartel respectfully requests that the Commission recognize the unique use of payphone lines and find that assessment of a PICC on payphone lines is inappropriate.

Respectfully submitted,

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May 26, 1998

CERTIFICATE OF SERVICE

I, Wendy Mills, do hereby certify that the foregoing Comments of Cleartel Communications, Inc., were served on the following this 26th day of May, 1998, via hand delivery:

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